

§ 1415.29 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this title are applicable to this part.

AUTHORITY: 7 U.S.C. 1444f, 1445b-3a, 15 U.S.C. 714b and 714c.

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PART 1416—VOLUNTARY PRODUCTION LIMITATION PROGRAM

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Subpart A—General Provisions

§ 1416.1 Applicability.

The regulations in this part are applicable to the Voluntary Production Limitation Program (VPLP), for the 1994 and 1995 crops of wheat and feed grains and set forth the terms and conditions under which producers of these commodities may enter into agreements with the Commodity Credit Corporation (CCC) to qualify for program benefits under the VPLP.

§ 1416.2 Administration.

(a) The provisions of §1413.4 of this chapter shall be applicable to this part, except as otherwise noted in this section.

(b) The VPLP will be administered under the general supervision of the Administrator, Farm Service Agency (FSA) and shall be carried out in the field by State and county Farm Service Agency committees (herein called "State and county committees").

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(d) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(e) No provision or delegation herein to a State or county committee shall preclude the Administrator, FSA, or designee, from determining any question arising under the VPLP or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(g) A representative of CCC may execute form CCC-135, Intention to Participate in the 1994 Voluntary Production Limitation Program, for wheat, barley, oats, corn, and grain sorghum only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any form CCC-135 which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, shall be null and void and shall not be considered to be an agreement between CCC and the operator and any other producer on the farm.

§ 1416.3 Performance based upon advice or action of county or State committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative or the Secretary shall be applicable to this part.

§ 1416.4 Appeals.

(a) A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 1413.109 of this chapter may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at part 780 of this title.

(b) With respect to farm program payment yields, determinations made before December 23, 1985, are not appealable.

§ 1416.5 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35, and assigned OMB Nos. 0560-0004 and 0560-0092.

§ 1416.6 Controlled substance violations.

In accordance with the regulations in part 796 of this title, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance such as marijuana.

§ 1416.7 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

Whenever a producer, or a person affiliated with such producer, is determined to be ineligible in accordance with the provisions of part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received.

§ 1416.8 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine, and words used in the present tense include the past and future as well as the present. The following terms shall give the following meanings. All regulations governing the reconstitution of farms in part 719 of this title and the regulations applicable to the production adjustment programs for wheat and feed grains set forth in part 1413 of this chapter shall be applicable to the VPLP.

Agreement means form CCC-135, Intention to Participate in the 1994 Voluntary Production Limitation Program.

Current year means current year as defined in accordance with 7 CFR 1413.9.

Producer means producer as defined in accordance with 7 CFR 1413.9.

Maximum payment acres means maximum payment acres as defined in accordance with 7 CFR 1413.9.

Production limitation quantity (PLQ) means the amount of production from an enrolled program crop of wheat or

feed grain that is eligible to be marketed in 1 year by a producer enrolled in the VPLP.

Production limitation quantity yield means for a wheat or feed grain program crop either:

- (1) The farm payment historical weighted yield (HWY), or,
- (2) The proven yield.

Subpart B—Program Provisions

§ 1416.100 Eligible VPLP Counties.

(a) The VPLP shall be effective for the 1995 crops of wheat and feed grains in:

- (1) Fremont, Harrison, Mills, Monona, and West Pottawattamie Counties in Iowa;
- (2) Adams, Furnas, Harlan, Kearney, and Phelps Counties in Nebraska; and
- (3) Bon Homme, Charles Mix, Douglas, Turner, and Yankton Counties in South Dakota.

(b) Farms enrolled in the VPLP must be administratively located in one of the selected counties.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

§ 1416.101 Basic program provisions.

(a)(1) The enrollment period for this program will coincide with the period established for the Acreage Reduction Program (ARP) signup, which will be January 30 through May 31, 1995.

(2) In order to participate in VPLP, a producer must purchase at least the minimum catastrophic level of crop insurance, according to part 400 of this chapter, for each crop of economic significance grown on each farm in the county in which the producer has an interest, if such insurance is available in the county for the crop.

(b) A farm enrolled in the VPLP must have an established crop acreage base (CAB) for the enrolled crop in accordance with part 1413 of this chapter.

(c) Producers on a farm shall be considered to have met the requirements of the current year ARP for barley, corn, grain sorghum, oats, and wheat, respectively, if requirements for the VPLP for such crop, as set forth in this section, are met.

(d) Participating producers shall be determined eligible for program benefits in accordance with 7 CFR parts

1497 and 1498 of this chapter, respectively.

(e) In order to participate, producers on a farm must enroll 1 or more wheat or feed grain crops into the program on a farm having a CAB for such a crop.

(f) Eligible crops to be enrolled in the VPLP are as follows:

- (1) Wheat;
 - (2) Corn;
 - (3) Grain sorghum;
 - (4) Barley; and
 - (5) Oats.
- (g) Producers with farming interests on multiple farms are not required to enroll all farms into the VPLP.

(h) Farm owners must treat operators, tenants, and sharecroppers fairly, in accordance with §1413.107 of this chapter.

(i) Producers must not be in violation of controlled substance provisions in accordance with part 796 of this title.

(j) Except for Bureau of Indian Affairs, Federal agencies are ineligible for VPLP payments.

(k) Acreage conservation reserve, in accordance with §1413.61 of this chapter, is not required for crops enrolled in the VPLP.

(l) The provisions of §1413.41 of this chapter do not apply to crops enrolled in VPLP.

(m) The provisions of §1413.43 of this chapter do not apply to crops enrolled in VPLP.

(n) The sum of the planted acreage for all enrolled wheat and/or feed grain program crops shall not exceed the sum of the enrolled wheat or feed program CAB's on the farm.

(o) Producers who do not comply with the terms and conditions of the VPLP for a crop shall be required to refund all or a part, as determined appropriate by CCC, of the current year payments received by such producers for such crop.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

§ 1416.102 Production limitation quantity (PLQ) and carryover quantities.

(a) Producers participating in the VPLP must agree not to market, barter, donate, or use on the farm, including use as livestock feed, a quantity greater than the sum of the PLQ for enrolled crops, calculated in paragraph

(d) of this section and eligible carryover determined according to paragraph (b) of this section.

(b) Carryover production will be defined as eligible and ineligible carryover as follows: If the crop was:

(1) Enrolled in the VPLP the previous year and the current year, any carryover production from any previous crop is ineligible carryover, and if marketed, bartered, donated, or used during the current year shall be counted against the PLQ for the current year. However, so that no benefit will occur from the carryover, the producer may destroy the carryover under supervision of an employee of FSA; or

(2) Not enrolled in the VPLP in the previous year but is enrolled in the current year, the carryover production from a previous crop year is eligible carryover and may be marketed, bartered, donated, or used during the current year without being counted against the PLQ for the current crop year; or

(3) Enrolled in VPLP in the previous year and is enrolled in ARP in the current year, the producer may devote an amount of acreage to conservation use acreage equal to the excess production divided by the PLQ yield for the crop and have the excess production considered eligible carryover.

(c) Production harvested in excess of the PLQ may be stored up to but not more than 5 years. Any excess commodity stored longer than 5 years is subject to forfeiture to CCC.

(d) The PLQ for a crop for a marketing year shall equal the product obtained by multiplying the acreage that would be permitted to be planted to such crop under the regular ARP conducted in accordance with part 1413 of this chapter by the PLQ yield.

(e)(1) The PLQ yield shall be calculated as the higher of:

(i) The farm program payment historic weighted yield for the crop determined in accordance with part 1413 of this chapter; or

(ii) The average of the actual yields, as determined in accordance with § 1416.104 of this part, for the crop for the farm for each of the 1989 through 1993 crop years, excluding the crop years with the highest and lowest yields.

(2) Any crop year in which the commodity was not planted shall be excluded.

(f) Farms which have either, corn or grain sorghum CAB's, or both, and participate in the VPLP, shall have the PLQ calculated as corn equivalents by multiplying the combined permitted acreage of corn and grain sorghum times the corn PLQ yield.

(g)(1) If grain sorghum is harvested on the farm, grain sorghum production credited against the PLQ shall be determined by:

(i) Dividing the corn yield by the grain sorghum yield; and

(ii) Multiplying the factor determined in (g)(1)(i) of this section times the grain sorghum production (bushels) marketed, bartered, donated, or used on the farm.

(2) The result is bushels of grain sorghum expressed in corn equivalents. Subtract this result from the PLQ for the combined permitted corn-grain sorghum PLQ to determine the quantity of corn eligible to be marketed.

§ 1416.103 Production evidence for actual yields.

The following provisions apply if producers elect to submit actual production for establishing actual yields for determining the PLQ in accordance with § 1416.102:

(a) Production evidence for the enrolled program crop(s) must be submitted to County FSA Offices on form ASCS-658, Record of Production and Yield. Additional evidence will be required if a representative of the county FSA office determines there is insufficient evidence to support the representation of production or acreage of the crop on the farm as certified to by the producer.

(b) Producers with an interest in enrolled crops on more than one farm shall certify the production from any farm not enrolled in VPLP and may be subject to a spotcheck for such certifications.

(c) Evidence for commercially stored production or production disposed of off the farm must show the:

- (1) Producer's name;
- (2) Commodity;
- (3) Buyer's or storer's name; and
- (4) Date of transaction.

(d) Acceptable documents substantiating amounts of commercially stored or disposed of production include:

- (1) Commercial or warehouse receipts;
- (2) Sales or elevator receipts;
- (3) Warehouse ledger sheets or copies;
- (4) Warehouse load summaries or copies;
- (5) Settlement sheets;
- (6) CCC-warehouse stored loan documents;
- (7) Farm stored loan documents, if quantity has been determined by measurement;
- (8) Weight slips or scale tickets from harvested or appraised acreage;
- (9) Approved Federal Crop Insurance Corporation or multiperil crop insurance loss adjustment settlement; and
- (10) Scale tickets or weight slips for wheat and feed grains that are supported by other evidence showing disposition, such as sales documents.

(e) (1) Documents showing the amount of production shall be reviewed to determine moisture content and dockage associated with the production. If the document does not show that the production has been reduced to standard moisture levels and shows:

- (i) Specific moisture that is greater than standard;
- (ii) Dockage; or
- (iii) Both excess moisture and dockage, the net amount shall be adjusted on standard moisture levels and applicable dockage standards as determined by CCC.

(2) [Reserved]

(f) Standard test weights shall be used to convert net weight to bushels, in accordance with part 1421 of this title.

(g)(1) Farm-stored production will be measured at producer's request and expense. Scale tickets or weight slips may be accepted for production instead of the measured quantity, when the scale tickets or weight slips include all of the following:

- (i) Farm identification number;
- (ii) Commodity;
- (iii) Date weighed; and
- (iv) Weigher's signature or initials, and company name if available.

(2) The county committee shall determine that the measurements indicating the weighed quantity in the bin is reasonable compared to the measured quantity.

(h) Determined quantities may be changed for future years based on delivery amounts if a delivery amount indicates the quantity in the bin.

(i) If delivered amounts are normally smaller than measured quantities, other evidence, such as sales receipts, may be required to adjust quantities.

(j) Commingled production shall be apportioned between farms by measuring total harvested production and apportioning harvested production between farms based on the ratio of each farm's payment yield.

(k) When a farm has multiple producers and the producers' share of the production and total bushels received are known, the farm yield may be computed from this data.

(l) Production evidence for enrolled crops may be accepted no later than the 15 calendar days after the final signup date for VPLP.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

§ 1416.104 Commingling grain.

(a) The producer will be allowed to store or commingle production for any and all crop years from acreage enrolled in the VPLP with any crop year production from acreage in compliance with the ARP.

(b) However, VPLP production must be measured by a representative of the county FSA office before it is commingled with any other production.

§ 1416.105 Required production reports.

(a) Producers enrolled in the VPLP must file reports for each enrolled crop which include:

(1) The quantity of each enrolled crop on hand at the beginning of the current marketing year (June 1, for wheat, barley, and oats; September 1, for corn and grain sorghum);

(2) The quantity of the enrolled crop harvested in the current year; and

(3) The quantity of the enrolled crop's production on hand at the end of the current marketing year (May 31,

for wheat, barley, and oats; August 31, for corn and grain sorghum).

(b) Producers shall certify the required quantities on form CCC-136, Production Certification for the VPLP.

(c) Certification of the quantity on hand at the beginning of the marketing year for the current crop production year shall occur no later than June 1 for wheat, barley, and oats and September 1 for corn and grain sorghum.

(d) A representative of the county FSA office will conduct spot checks of all producer certifications.

(e) The operator shall certify current year production of wheat and small grains harvested for enrolled program crops no later than the following dates:

(1) Iowa—July 30;

(2) Nebraska—July 15; and

(3) South Dakota—August 1.

(f) The operator shall certify current year production of corn and grain sorghum harvested for enrolled corn and grain sorghum crops no later than December 1.

§ 1416.106 Determining compliance with PLQ.

(a) The quantity of an enrolled crop marketed, bartered, donated, or used on the farm during the marketing year will be calculated, based on the quantities reported in accordance with § 1416.105, by adding the amount of the enrolled crop reported on hand at the beginning of the marketing year and the production amount of the enrolled crop harvested and subtracting the quantity of the enrolled crop on hand at the end of the marketing year.

(b) The production amount disposed of:

(1) Is in compliance with program provisions if the result is less than or equal to the sum of the PLQ for the crop and eligible carryover as determined in § 1416.102;

(2) Is not in compliance if the result of paragraph (a) of this section is more than the sum of the PLQ and eligible carryover as determined in § 1416.102. In this case, excess marketings have occurred and the producer will be subject to a penalty.

(c) When the disposed bushels exceed the allowable quantities determined according to paragraph (a) of this section by:

(1) 5 percent or less, the penalty is the larger of the price support rate established for the county for the commodity or the current market price, as determined by CCC, times the excess bushels;

(2) 6 to 10 percent, the penalty is the larger of the price support rate established for the county for the commodity or 1.2 times the current market price, as determined by CCC, at the time the violation is discovered times the excess bushels;

(3) Over 10 percent, the penalty is the larger of the target price or 1.5 times the current market price, as determined by CCC, at the time the violation is discovered times the excess bushels.

§ 1416.107 Penalties for inaccurate inventory and crop production reporting errors.

(a) A penalty shall be assessed for each crop enrolled in this program for discrepancies in reporting the bushel quantity in accordance with § 1416.105.

(b) For any discrepancies in quantities listed above, the penalty per bushel shall be the higher of:

(1) The target price; or

(2) 1.5 times the market price, as of the date the quantities are required to be reported.

§ 1416.108 Incorrect, false, or unacceptable evidence and penalties.

When production evidence submitted for providing yields in accordance with § 1416.103 is found to be unacceptable, incorrect, or false, a proven yield will not be established.

§ 1416.109 Planted and considered planted acreages.

Regardless of planted acreages, planted and considered planted (P&CP) acreages for crops enrolled in the VPLP shall be equal the CAB.

§ 1416.110 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination made in accordance with this part shall:

(1) Not be entitled to payments under the crop program with respect to which the representation was made,

(2) Refund to CCC all payments received by such producer with respect to such farm and such crop program, and

(3) Be liable for liquidated damages in accordance with the terms of the CCC-477.

(b) With respect to programs conducted in accordance with this part, a producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the CCC-477. Such producer also shall be ineligible to receive program payments for the year in which the scheme or device was adopted. If such action also is determined by CCC to be a scheme or device, a fraudulent representation or a misrepresentation of fact affecting a determination made in accordance with part 1497 of this title, the producer shall also be ineligible for program payments.

(c) A producer who is determined to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent misrepresentation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to such farm. Such producer shall be ineligible to receive program payments for the year in which the scheme or device was adopted, and also in the succeeding year.

[59 FR 59320, Nov. 16, 1994; 60 FR 57823, Nov. 22, 1995]

Subpart C—Agreement Procedure for VPLP

§ 1416.300 Obtaining owner and producer signatures.

(a) The agreement to participate in the 1994 VPLP, form CCC-135, shall be signed by:

(1) The operator; and

(2) All producers sharing in the enrolled crop or the proceeds of the enrolled crop.

(b) Owners not sharing in the enrolled crop shall not be required to sign the agreement. However, either of the following must be provided for the current year to the County Office:

(1) A written lease, rental arrangement, or other document signed by the owner, showing that the operator has operational control over the farm, or

(2) A written statement by the operator certifying that the operator understands that any incorrect or misleading statement shall require a forfeiture of all program benefits for the farm for the years included in the certification, and certifying either of the following:

(i) The land is rented for the current pilot VPLP year and the landowner receives no benefit from the crop; or

(ii) Landowner's cropland is enrolled in conservation reserve program and receives no benefit from the crop.

(c) County offices shall not approve form CCC-135 when any producer refuses to sign form CCC-135.

(d) The County committee may accept a late-filed CCC-135 after the end of the signup period if the county committee determines that either:

(1) Failure to timely file was beyond the control of the producer, or;

(2) All of the following apply:

(i) The farm operator demonstrated a good faith effort to timely file the required information;

(ii) Failure to timely apply did not result from gross negligence on the part of the farm operator or any party to CCC-135; and

(iii) Acceptance of CCC-135 would not create a situation that defeats the purpose of VPLP.

§ 1416.301 Determining share leases or cash leases.

Share leases and cash leases shall be determined in accordance with § 1413.107 of this chapter.

§ 1416.302 Changes to form CCC-135.

(a) The operator may cancel or revise form CCC-135 before the end of the VPLP signup period. Any advance payments that were issued and cannot be earned must be refunded with interest unless CCC-184, CCC check, is returned unnegotiated.

(b) The request by the farm operator to revise or cancel form CCC-135 shall be in writing or attached to form CCC-135.

(c) A new form CCC-135 shall be used as follows:

(1) When form CCC-135 has been approved during the signup period because advance payments were requested and then the operator revises form CCC-135;

(2) When an operator cancels a crop or reinstates a canceled crop; and

(3) With all required signatures for the crops to be enrolled or canceled.

(d) A canceled form CCC-135 may be reinstated before the end of the signup period.

(e) When form CCC-135 is canceled, all crops will be considered nonparticipating in the VPLP for all purposes, including planted and considered planted acreages.

§ 1416.303 Revisions to form CCC-135 because of succession in interest.

(a) The provisions at § 1413.51 relating to successors in interest are applicable to the VPLP. In addition:

(1) All producers whose shares have changed from the original CCC-135 must sign a revised CCC-135 by the earliest of the following:

(i) Date the crop is actually harvested;

(ii) December 31 of the current year; or

(iii) 15 calendar days after the county committee was notified of the succession.

(2) The successor shall be informed, before the successor's request to revise the CCC-135 is approved that:

(i) Successor is fully responsible for the predecessor's payments;

(ii) Successor shall refund any outstanding advance that is not earned on the farm; and

(iii) The successor's payments will be reduced by the amount of any outstanding advance.

(b)(1) When the predecessor does not agree to a revised CCC-135 the county committee shall determine if the predecessor has lost the authority to carry out the producer's responsibilities under CCC-135. In such cases the county committee shall:

(i) With the concurrence of the FSA District Director, determine the producers, including the predecessor, who should receive payments based on a fair division of the payment; and

(ii) Offer the producers the opportunity to enter into a revised CCC-135.

(2) If the successor does not agree to enter into a revised CCC-135, the original CCC-135 will remain in effect and the original parties to CCC-135 remain liable if noncompliance occurs.

(c) If a person who signed a CCC-135 is later determined to be dead, missing, or declared incompetent, payments will be made in accordance with part 1413 of this title.

§ 1416.304 Effect of reconstitutions on approved form CCC-135.

(a) If a farm reconstitution is effective for the current year and is approved after form CCC-135 is filed and approved, producers may file a new form CCC-135 for a resulting farm by the later of the following:

(1) 15 calendar days after the date of form ASCS-476, Notice of Acreage Bases, Yields, Allotments, and/or Quotas, was determined for the resulting farm; or

(2) The end of the signup period.

(b) If the producer on the parent farm has not refunded the advance payment, then the producers on the resulting farm cannot receive an advance payment on the same acreage, and the final payments to the producers on the resulting farm shall be reduced by the advances paid for the parent farm.

Subpart D—Payments

§ 1416.400 Program payments and price support loans and loan deficiency payments.

(a) The deficiency payment provisions of part 1413 of this chapter are applicable to this part, except as otherwise provided in this section.

(b) Producers of enrolled CAB's shall be eligible to earn deficiency payments on the number of acres planted to such CAB's or the maximum payment acres for the CAB's including CAB's planted to an enrolled wheat or feed grain crop different from the CAB assigned to the crop.

(c) The deficiency payment yield shall be the historic weighted yield for the crop. The actual proven yield shall be used only to calculate the PLQ for the crop.

(d) Production from an enrolled crop is eligible for current program year price support benefits including the farmer owned reserve if the quantity is eligible for the farmer owned reserve.

[59 FR 59320, Nov. 16, 1994, as amended at 60 FR 44259, Aug. 25, 1995]

§ 1416.401 Determining producer shares of crop.

(a) The producer's share of the crop shall be determined in accordance with the regulations in § 1413.106.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

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